IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 5029 to 5033 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)

Versus

GADHVI NAGBAI SHANKARBHAI - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned GP for the appellants in First Appeal Nos.5029 to 5031 of 2006 and Ms.Krina P.Calla, learned AGP for appellants in First Appeal Nos.5032 and 5033 of 2006
MR AJ PATEL for Defendant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7,1.2.8

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/12/2006

COMMON ORAL JUDGMENT

(Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. Admitted. Mr.A.J.Patel,learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated April 30, 2005 rendered by the learned Civil Judge (SD), Mehsana in Land Reference Case Nos.28 of 2004 to 30 of 2004, 32 of 2004 and 4300 of 2003 by which the claimants are awarded additional compensation at the rate of Rs.48.20 Ps. per sq.mt. over and above compensation of Rs.1.80 Ps.per sq.mt awarded by the Special Land Acquisition Officer by his award dated January 7,1998, for their acquired lands.

3. A proposal was made to the State Government to acquire agricultural lands of village Nagarasan, Taluka Kadi, District Mehsana for the public purpose of Narmada Yojana. On consideration of the said proposal, the State Government was satisfied that certain agricultural lands of village Nagarasan were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on August 27, 1996. The land owners,whose lands were proposed to be acquired, were served with notices. They lodged objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer submitted his report as contemplated by Section 5A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Nagarasan specified in Notification published under Section 4(1) of the Act were needed for public purpose of Narmada Yojana. Therefore, declaration under Section 6 of the Act was made,which was published in the Official Gazette on March 13, 1997.

The interested persons were thereafter served with notices for determination of compensation. They appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated January 7, 1998 offered compensation to the claimants at the rate of Rs.1.80 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Mehsana, which were registered as Land Reference Case Nos.28 of 2004 to 30 of 2004, 32 of 2004 and 4300 of 2003.

4. On behalf of the claimants an affidavit was filed by Vishnudan Shankarbhai Gadhavi under the provisions of Order 18 Rule 4 of the Code of Civil

Procedure, 1908. In the said affidavit, it was stated by Vishnudan Shankarbhai Gadhavi that precious lands of village Kadi, village Jothana etc. were situated near the acquired lands. It was mentioned by him that the lands acquired were highly fertile and that the claimants were taking three crops in a year. According to him all facilities such as Co-operative Society, Milk Society, School, telephone, dispensaries, ST bus services etc. were available in the village and that his village was fully developed. It was further mentioned by Mr.Gadhavi in his affidavit that lands of village Adundara and the acquired lands were situated adjoining to each other and were similar in all respects.

5. This witness was cross examined on behalf of the acquiring body. The suggestion made on behalf of the acquiring body that the acquired lands were situated at a distance from village Kadi was emphatically denied by him. According to him the claimants were selling agricultural produces in market yard but he had not produced bills issued by authorities of the market yard. This witness was also cross-examined on

behalf of the State Government. The suggestion made on behalf of the State Government that the claimants were taking only one crop in a year was emphatically denied by him. It was also denied by the witness that cultivation was dependent upon rainy water.

6. On behalf of the acquiring authorities Navinchandra Natvarlal Thakkar was examined at Exh.29. His evidence would indicate that he had no personal knowledge regarding the acquisition proceedings which were initiated by his predecessor in office nor he had seen the acquired lands. It may be stated that the claimants had produced previous award of Reference Court dated December 29,2001 rendered in Land Acquisition Reference Case Nos.119 to 128 of 1999 relating to the lands of village Adundara in support of their claim for enhanced compensation. Another witness examined on behalf of the acquiring authorities was Janakbhai Bapulal. His testimony recorded at Exh.30 indicates that at the time of tendering evidence before the Court he was discharging duties as Additional Assistant Engineer at Mehsana Office. What was stated by him was that

the Special Land Acquisition Officer had taken into consideration the relevant factors before determining the compensation payable to the claimants. However, in his cross-examination it was admitted by him that the lands, which were previously acquired from this village and the lands, which were acquired in the instant case were adjoining each other and that he had no personal knowledge regarding the acquisition proceedings initiated in the instant case. It was also mentioned by him that he had not visited Nagarasan village and was deposing before the Court on the basis of record available with him.

7. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous award relating to the lands of village Adundara was relevant and furnished good guidance for assessing market value of the lands acquired from village Nagarasan. Placing reliance on the said previous award, the Reference Court has held that the claimants are entitled to additional compensation of Rs.48.20 Ps. per sq.mt. over and above the compensation of Rs.1.80 Ps. per sq.mt awarded by the

Special Land Acquisition Officer for their acquired lands by common judgment and award dated April 30, 2005, giving rise to above numbered appeals.

8. This court has heard Mr.S.S.Shah, learned Government Pleader with Ms.Krina P.Calla, learned AGP for the appellants and Mr.A.J.Patel,learned counsel for the claimant/claimants in each appeal at length and in great detail. This Court has also considered the documentary evidence produced by the learned advocates for the parties for perusal of the Court.

9. As is evident from the record, on behalf of the claimants witness Vishnudan Shankarbhai Gadhavi was examined at Exh.10. Though the witness had produced 7-12 extracts to establish his claim that the lands acquired were highly fertile and that the claimants were earning substantial income from the sale of agricultural produces, the enhanced compensation was never claimed on yield basis. As noticed earlier, the claimants have relied upon previous award of Reference Court rendered by learned Extra Assistant Judge, Mehsana on December 29, 2001 in Land

Acquisition Reference Case Nos.119 to 128 of 1999 relating to the lands of village Adundara. It is relevant to notice that the assertion made by witness Vishnudan Shankarbhai Gadhavi that the lands of village Adundara and village Nagarasan are similar in all respects, including fertility, was not challenged in his cross-examination either by the acquiring body or by the State Government. Therefore, the Court will have to proceed on the footing that the lands of village Nagarasan and village Adundara were similar in all respects. Further it is not disputed by the appellants that the lands, which were subject matter of previous award, were situated adjoining to the lands acquired in the instant case. This fact has been admitted by witness Navinchandra Natvarlal Thakkar, who is examined by the acquiring body at Exh.29 and the relevant admission forms part of his cross-examination. It is well settled that previous award of the Reference Court relating to the lands acquired from the adjoining village and which has attained finality is relevant piece of evidence and can be taken into consideration by the court while determining market value of the lands acquired

subsequently from another adjoining village. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to lands of village Adundara. The previous award of the Reference Court relating to village Adundara is produced by the claimants at Exh.27, which indicates that pursuant to publication of notification issued under Section 4(1) of the Act on August 9, 1995 in the Official Gazette, agricultural lands of village Adundara, Taluka Kadi, District Mehsana were acquired for the public purpose of Narmada Canal. Therein the Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.3/- per sq.mt. for non irrigated lands and Rs.4.50 Ps. per sq.mt. for irrigated lands by award dated March 9, 1998. Feeling aggrieved by the said award, the claimants had sought references. The Reference Court on appreciation of evidence adduced by the parties awarded additional compensation to the claimants at the rate of Rs.50/- per sq.mt. by judgment and award dated December 29,2001. During the course of hearing of these appeals, the learned

advocates for the parties have produced simple copy of judgment rendered in First Appeal No.855/05 decided by Division Bench comprising B.J.Shethna and M.C.Patel,JJ on April 4,2005, which indicates that the judgment and award rendered in Land Reference Case Nos.1202/98 was challenged by the Special Land Acquisition Officer before the High Court and the High Court by judgment dated April 4,2005 allowed it partly in view of decision rendered in First Appeal No.537 to 550 of 2005 on March 23,2005. The simple copy of judgment rendered in First Appeal Nos.537 to 550 of 2005 decided by Division Bench comprising B.J.Shethna and M.C.Patel,JJ on March 23,2005 would indicate that the Division Bench relying upon decision dated March 23,2005 rendered in First Appeal Nos.622 to 634 of 2004 had partly allowed the appeals by holding that the claimants would be entitled to compensation at the rate of Rs.42.70 ps. per sq.mt. for their acquired lands, instead of Rs.54.50 Ps. Per sq.mt. awarded by the Reference Court. The simple copy of judgment dated March 23,2005 rendered by the Division Bench comprising B.J.Shethna and M.C.Patel,JJ in First Appeal Nos.622 to 634 of 2004

would indicate that therein the award rendered by the Reference Court in Land Acquisition Reference Case Nos.1173 to 1185 of 1998 was challenged. It may be mentioned that Land Reference Case Nos.1173 to 1185 of 1998 related to lands of village Adundara and Reference Court had awarded in all compensation of Rs.54.50 Ps. per sq.mt. to the claimants in those cases, but the High Court had reduced the same to Rs.42.70 Ps. per sq.mt. by judgment dated March 23,2005. Under the circumstances, this Court is of the opinion that in view of decision dated April 4,2005 rendered by the Division Bench of this Court in First Appeal No.855/05, the claimants would be entitled to compensation at the rate of Rs.42.70 Ps. per sq.mt. and not at the rate of Rs.50/- per sq.mt as held by the Reference Court.

10. For the foregoing reasons,appeals are partly allowed. The judgment and award dated April 30,2005 rendered by the learned Civil Judge (SD), Mehsana in Land Reference Case Nos.28 of 2004 to 30 of 2004, 32 of 2004 and 4300 of 2003 is hereby partly modified and it is held that the claimants would be entitled

to compensation at the rate of Rs.42.70 Ps.per sq.mt. for their acquired lands. The rest of the directions given by the Reference Court in the impugned award are hereby upheld and not interfered with at all. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment.

(J.M.Panchal,J)

arg (Smt.Abhilasha Kumari,J)